

National Credit Union Administration

§ 701.22

satisfaction of the FCU's board of directors) over-the-counter sales of financial options contracts by the parent, subsidiary, or affiliated entity to a Federal credit union.

(vii) *Put* means a financial options contract which entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.

(2) *Permitted options transactions.* A Federal credit union may, to manage risk of loss through a decrease in value of its commitments to originate real estate loans at specified interest rates, enter into long put positions on GNMA, FNMA, and FHLMC securities:

(i) If the real estate loans are to be sold on the secondary market within ninety (90) days of closing;

(ii) If the positions are entered into:

(A) Through a contract market designated by the Commodity Futures Trading Commission for trading such contracts, or

(B) With a primary dealer in Government securities;

(iii) If the positions are entered into pursuant to written policies and procedures which are approved by the Federal credit union's board of directors, and include, at a minimum:

(A) The Federal credit union's strategy in using financial options contracts and its analysis of how the strategy will reduce sensitivity to changes in price or interest rates in its commitments to originate real estate loans at specified interest rates;

(B) A list of brokers or other intermediaries through which positions may be entered into;

(C) Quantitative limits (e.g., position and stop loss limits) on the use of financial options contracts;

(D) Identification of the persons involved in financial options contract transactions, including a description of these persons' qualifications, duties, and limits of authority, and description of the procedures for segregating these persons' duties,

(E) A requirement for written reports for review by the Federal credit union's board of directors at its monthly meetings, or by a committee appointed by the board on a monthly basis, of:

(1) The type, amount, expiration date, correlation, cost of, and current or projected income or loss from each position closed since the last board review, each position currently open and current gains or losses from such positions, and each position planned to be entered into prior to the next board review;

(2) Compliance with limits established on the policies and procedures; and

(3) The extent to which the positions described contributed to reduction of sensitivity to changes in prices or interest rates in the Federal credit union's commitments to originate real estate loans at a specified interest rate; and

(iv) If the Federal credit union has received written permission from the appropriate NCUA Regional Director to engage in financial options contracts transactions in accordance with this § 701.21(i) and its policies and procedures as written.

(3) *Recordkeeping and reporting.* (i) The reports described in § 701.21(i)(2)(iii)(E) for each month must be submitted to the appropriate NCUA Regional Office by the end of the following month. This monthly reporting requirement may be waived by the appropriate NCUA Regional Director on a case-by-case basis for those Federal credit unions with a proven record of responsible use of permitted financial options contracts.

(ii) The records described in § 701.21(i)(2)(iii)(E) must be retained for two years from the date the financial options contracts are closed.

(4) *Accounting.* A federal credit union must account for financial options contracts transactions in accordance with generally accepted accounting principles.

[49 FR 30685, Aug. 1, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 701.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 701.22 Loan participation.

(a) For purposes of this section:

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(1) *Participation loan* means a loan where one or more eligible organizations participates pursuant to a written agreement with the originating lender.

(2) *Eligible organizations* means a credit union, credit union organization, or financial organization.

(3) *Credit union* means any Federal or State chartered credit union.

(4) *Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership organizations principally composed of credit unions.

(5) *Financial organization* means any federally chartered or federally insured financial institution; and any state or federal government agency and their subdivisions.

(6) *Originating lender* means the participant with which the member contracts.

(b) Subject to the provisions of this section any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of director's written participation loan policies, *Provided:*

(1) No Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 10 per centum of the Federal credit union's unimpaired capital and surplus;

(2) A written master participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors, or if the board has so delegated in its policy, the investment committee or senior management official(s) and retained in the Federal credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement or directly in the master agreement, the participation loan or loans prior to their sale; and

(3) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) Originate loans only to its members;

(2) Retain an interest of at least 10 per centum of the face amount of each loan;

(3) Retain the original or copies of the loan documents; and

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(d) A participant Federal credit union that is not an originating lender shall:

(1) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

(2) Participate in participation loans only if made to its own members or members of another participating credit union;

(3) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

[43 FR 51610, Nov. 6, 1978, as amended at 46 FR 38680, July 29, 1981; 46 FR 43830, Sept. 1, 1981; 47 FR 1371, Jan. 13, 1982; 47 FR 54428, Dec. 3, 1982. Redesignated and amended at 49 FR 30688, Aug. 1, 1984; 60 FR 58204, Nov. 27, 1995; 68 FR 75111, Dec. 30, 2003]

§ 701.23 Purchase, sale, and pledge of eligible obligations.

(a) For purposes of this section:

(1) *Eligible obligation* means a loan or group of loans.

(2) *Student loan* means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured